

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

U.S. Bank National Association,

Civil No. 10-2367 (SRN/JJG)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Direct Equity Mortgage, L.L.C. ,

Defendant.

JEANNE J. GRAHAM, United States Magistrate Judge

On April 25, 2011, this Court recommended that Plaintiff U.S. Bank National Association's Motion for Sanctions and Entry of Default Judgment be granted pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(vi). (Doc. No. 40.) The Court also recommended that the attorney's fees and costs incurred by Plaintiff in moving to compel and moving for default judgment be awarded as sanctions under Rule 37(c) and Rule 37(d)(3). Because Plaintiff did not submit an affidavit of fees and costs or specify the amount of its damages, the Court ordered Plaintiff to submit an affidavit containing this information. The Report and Recommendation was adopted by the Honorable Susan Richard Nelson, United States District Judge, on June 15, 2011. (Doc. No. 43.)

Meanwhile, Thomas Romine, a Vice President and National Sales Manager of Plaintiff, filed an Affidavit in Support of Plaintiff's Damages, setting Plaintiff's losses at \$921,008.48. Plaintiff's attorney, Seth Leventhal, also submitted an Affidavit in Support of Plaintiff's Damages, Attorneys' Fees, and Costs. (Doc. No. 41.) Mr. Leventhal averred that the Mortgage Purchase Agreement between the parties provided that Plaintiff would be entitled to an award of attorneys' fees for any loss caused by Defendant's breach of the Mortgage Purchase Agreement.

The applicable provision of the Mortgage Purchase Agreement is quoted in the Amended Complaint. (Am. Compl. ¶ 18; Doc. No. 20.) The amount of attorneys' fees incurred by Plaintiff due to Defendant's breaches of the Mortgage Purchase Agreement is \$20,866.98. This amount includes the attorneys' fees incurred by Plaintiff in moving to compel and moving for default judgment. Defendant did not respond or object to the amount of attorneys' fees or damages.

Accordingly, **IT IS HEREBY RECOMMENDED** that default judgment be entered against Defendant Direct Equity Mortgage, L.L.C. in the amount of \$941,875.46. This amount represents \$921,008.48 in damages and \$20,866.98 in attorneys' fees.

Dated: July 7, 2011

s/ Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge

NOTICE

Pursuant to District of Minnesota Local Rule 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by **July 22, 2011**. A party may respond to the objections within fourteen days after service thereof. Any objections or responses shall not exceed 3,500 words. The District Judge will make a de novo determination of those portions of the Report and Recommendation to which objection is made.